

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN WRIGHT,

Defendant.

Case No. 2:14-cr-357-APG-VCF

REPORT & RECOMMENDATION

MOTION TO DISMISS (#62)

This matter involves the United States of America's prosecution of *pro se* Defendant Brian Wright for, *inter alia*, conspiracy to interfere with commerce by robbery under the Hobbs Act, 18 U.S.C. § 1951, and being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). *See* (Super. Indict. #26¹). Before the court is Mr. Wright's Motion to Dismiss (#62). The government opposed (#66). For the reasons stated below, Mr. Wright's motion should be denied.

I. LEGAL STANDARD

If a criminal defendant believes the government's indictment "fails to invoke the court's jurisdiction," Federal Rule of Criminal Procedure 12(b) permits the defendant to contest jurisdiction in a pretrial motion to dismiss. *See* FED. R. CRIM. P. 12(b)(2), (b)(3)(B). When examining a motion to dismiss under Rule 12, the court must take the indictment's allegations as true. WRIGHT & LEIPOLD, FEDERAL PRACTICE & PROCEDURE: CRIMINAL 4TH § 194 (citing, *inter alia*, *United States v. Sampson*, 371 U.S. 75, 78–79 (1962)). The court may make preliminary findings of fact necessary to decide questions of law. *United States v. Shortt Accountancy Corp.*, 785 F.2d 1448, 1452 (9th Cir. 1986). The court may not,

¹ Parenthetical citations refer to the court's docket.

1 however, invade the province of the jury and decide by pretrial motion matters “of the general issue.” *Id.*;
 2 FED. R. CRIM. P. 12(b)(2) (“A party may raise by pretrial motion any defense, objection, or request that
 3 the court can determine without a trial of the general issue”). When deciding a pretrial motion brought
 4 under Rule 12, the court’s role is merely to determine whether the indictment is facially valid, and not
 5 whether either party is entitled to judgment on the pleadings. *See, e.g., United States v. Titterington*, 374
 6 F.3d 453, 457 (6th Cir. 2004) (“[A] pretrial motion alleging a ‘defect in the indictment’ under [Rule]
 7 12(b)(3)(B), represents the modern equivalent of a ‘demurrer’ because both pleadings serve to attack the
 8 facial validity of the indictment”); *United States v. Jensen*, 93 F.3d 667, 669 (9th Cir. 1996) (citation
 9 omitted) (“A motion to dismiss the indictment cannot be used as a device for a summary trial of the
 10 evidence”).

11 II. DISCUSSION

12 Mr. Wright moves to dismiss the government’s superseding indictment, arguing that the court
 13 lacks jurisdiction over the charged offences. (Mot. to Dismiss (#62) at 4–6). He contends that the alleged
 14 crimes fall under the State of Nevada’s jurisdiction, the federal government erroneously “pick[ed] up” his
 15 case from state investigators, and there was “no federal involvement in the investigation,” which deprives
 16 the court of jurisdiction. Mr. Wright’s motion should be denied.

17 Federal Rule of Criminal Procedure 12(b) governs pleadings and pretrial motions. It permits a
 18 criminal defendant to contest jurisdiction in a motion to dismiss. *See* FED. R. CRIM. P. 12(b)(2). In federal
 19 court, the court’s jurisdiction extends to “all offenses against the laws of the United States.” *See* 18 U.S.C.
 20 § 3231. This statute forms “the beginning and end of the [court’s] jurisdictional inquiry.” *Hugi v. United*
 21 *States*, 164 F.3d 378, 380 (7th Cir. 1999) (Easterbrook, J.).

22 If, as here, a federal grand jury returns an indictment, which charges the defendant with violations
 23 of federal law, then 18 U.S.C. § 3231 empowers the court to hear a criminal case and impose a sentence.
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1 *See, e.g., United States v. Longoria*, 259 F.3d 363 (5th Cir. 2001), *on reh'g en banc*, 298 F.3d 367 (5th

2 Cir. 2002). When examining a motion to dismiss under Rule 12, the court must take the indictment's

3 allegations as true. *WRIGHT & LEIPOLD, supra*, at § 194 (citation omitted).

4 Here, on November 4, 2014, a federal grand jury returned a three-count indictment against Mr.

5 Wright and his co-defendants. On January 13, 2015, a federal grand jury returned a five-count superseding

6 indictment against Mr. Wright and his co-defendants. Counts one and three alleges that Mr. Wright

7 violated the Hobbs Act, 18 U.S.C. § 1951. The indictment tracks the statutory language and states that he

8 and his co-defendant Danielle Perreira “did agree and conspire together and with others known and

9 unknown, to unlawfully obstruct, delay or affect commerce, as that term is defined in Title 18, United

10 States Code, Section 1951.” (Super. Indict. (#26) at 1–2).

11 Counts two and four allege that Mr. Wright violated 18 U.S.C. § 924(c)(1)(A)(ii)–(iii). The

12 indictment tracks the statutory language and states that Mr. Wright knowingly and intentionally used and

13 carried a firearm in connection with crimes of violence on or about May 8, 2014, and May 20, 2014.

14 (Super. Indict. (#26) at 2, 3).

15 Count five alleges that Mr. Wright violated 18 U.S.C. §§ 922(g)(1), 924(a)(2). The indictment

16 tracks the statutory language and states that Mr. Wright was convicted of a felony on March 22, 2007, and

17 subsequently possessed a Glock Model 27 .40 caliber handgun bearing serial number VNG189 on or about

18 June 6, 2014. (Super. Indict. (#26) at 3–4). This is all that 18 U.S.C. § 3231 requires. The court, therefore,

19 has jurisdiction.

20 Nonetheless, Mr. Wright appears to argue that the federal government has no legislative authority

21 to criminalize the conduct charged in the indictment and that the federal government is barred from

22 prosecuting the alleged conduct. The court disagrees. Article I, section 8, clause 3 of the United States

23 Constitution empowers Congress “[t]o regulate Commerce with foreign Nations, and among the several

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1 States, and within the Indian Tribes.” This generally includes the power to criminalize conduct that
2 (1) involves “the use of the channels of interstate commerce,” (2) involves “the instrumentalities of
3 interstate commerce, or persons or things in interstate commerce, even though the threat may come only
4 from intrastate activities,” and (3) “substantially affect[s] interstate commerce.” *See, e.g., United States*
5 *v. Lopez*, 514 U.S. 549, 558–59 (1995).

6 Although states possess the primary authority for defining and enforcing criminal law, *see Brecht*
7 *v. Abrahamson*, 507 U.S. 619, 635 (1993) (quoting *Engle v. Isaac*, 456 U.S. 107, 128 (1982), the
8 Commerce Clause empowers the legislative branch to criminalize conduct, including the acts Mr. Wright
9 allegedly committed. *See, e.g., United States v. Kim*, 94 F.3d 1247, 1249–50 (9th Cir. 1996). Once
10 Congress criminalizes conduct, 18 U.S.C. § 3231 grants the court jurisdiction to hear prosecutions
11 involving the criminalized conduct.

12 Nor does the court lack jurisdiction over the charged offences because, as Mr. Wright asserts, the
13 state investigated the alleged crimes and has the primary authority to prosecute them. *See United States*
14 *v. Bernhardt*, 831 F.2d 181, 182 (9th Cir. 1987) (citing *Abbate v. United States*, 359 U.S. 187, 194 (1959)
15 (“[T]rial in a state court does not bar trial in a federal court for the same criminal conduct.”); *see also*
16 *United States v. Zone*, 403 F.3d 1101, 1104 (9th Cir. 2005) (“The Double Jeopardy Clause does not prevent
17 federal prosecutors from encouraging their state counterparts to pursue plea bargains, nor does it prevent
18 them from taking advantage of the evidentiary record developed in connection with a defendant's previous
19 state conviction.”).

20 Here, Congress criminalized interfering with interstate commerce, 18 U.S.C. § 1951, brandishing
21 a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c)(1)(A)(ii)–(iii), and being a felon in
22 possession of a firearm, see 18 U.S.C. §§ 922(g)(1), 924(a)(2). As a result, the federal government is not
23 barred from prosecuting Mr. Wright for the alleged crimes and his motion to dismiss should be denied.
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1 ACCORDINGLY, and for good cause shown,

2 IT IS RECOMMENDED that Brian Wright's Motion to Dismiss (#62) be DENIED.

3 IT IS SO RECOMMENDED.

4 DATED this 6th day of July, 2015.

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8 CAM FERENBACH
9 UNITED STATES MAGISTRATE JUDGE
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